

Though a few persons may afford cellular phones, the majority cannot and this is a serious setback at this time of technological advancement.

I therefore call on GT&T to spare no effort in delivering on the promises made to us.

LACHMAN RAMDASS
RDC COUNCILLOR

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Exhibit 24

Betsy Ground needs telephones *Stabroek*
Sept 8' 99

Dear Sir,

The residents of Betsy Ground are perturbed over a decision by the GT&T to extend their services to the end of Goed Bananen land and leave their village which is just about 16 electricity lamp posts in length without service lines.

Answers to enquiries from the authorities in New Amsterdam were unsatisfactory, as residents were told that the work being undertaken was only maintenance. This is misleading as there is an extension of the line - using larger cables - from where it had previously ended. It is difficult to understand the scheme of things.

We would like to ask everyone responsible for installing this service in East Canje to consider the wisdom, benefits, welfare, etc., of the residents at Betsy Ground if the available lines were distributed between all the villages.

Sir, the residents do not think this is asking too much especially when we are so near but yet so far with only about 200 rods of cable to cover our village and make life so much easier for residents.

Our little village (250 homes, 2000 pop.) has over fifteen business places on the roadside alone, a sawmill, a gas station, five religious houses, a primary school and nursery school recently rehabilitated and newly built, respectively. At least two persons one a senior microscopist another an acting technologist are on 24 hours call at the New Amsterdam hospital.

This village has experienced several robberies recently and a few houses have been razed to the ground. A telephone service would have made an enormous difference in tackling these and other problems and even having us looking up not down entering the new millennium.

Yours faithfully
Maurice Sookraj

Telephone badly needed in Uitvlugt

Dear Sir,

I want to congratulate GT&T for their long service in Guyana, but they still can't provide a telephone service to everyone.

We at Uitvlugt Pasture are badly in need of telephones. I want to know if the government can't bring in another phone company so GT&T can get some competition?

Yours faithfully
F. Ali

INTERNET SERVICE AGREEMENT ATTACHMENT**INTERNET SERVICE CUSTOMERS PRICE LIST****A. INTERNET SERVICE RE-SELLERS**

Customers who enter into agreement with GT&T for the provision of Internet access with a view to re-selling that access shall refer to the fees and charges set out below. The fees and charges applicable to any particular customer is ascertained based on the speed/bandwidth of the access specified in that customer's contract document.

New Bandwidth Prices Based On Americas II Plus 25% Satellite Restoration (US\$/Month)

	BANDWIDTH												
	64 Kbps	128 Kbps	192 Kbps	256 Kbps	384 Kbps	448 Kbps	512 Kbps	640 Kbps	768 Kbps	896 Kbps	1,024 Kbps	1,544 Kbps	2,048 Kbps
Installation	1750	2010	2200	3000	3400	3600	3950	4010	4100	4500	4600	4600	5000
1-Year	3,200	5,650	9,200	9,388	10,548	11,459	12,075	13,267	14,039	15,366	18,078	24,332	31,600
2-Year	2,890	5,085	8,999	9,182	10,310	11,200	11,802	12,967	13,714	15,019	17,664	23,499	30,494
3-Year	2,592	4,577	8,695	8,871	9,950	10,809	11,390	12,515	13,230	14,495	17,040	22,649	29,396

B. RECONNECTION CHARGE

The charge for reconnection of service shall be US\$100.00

C. "CALL OUT" CHARGE

Where a fault is reported as being in GT&T's network and a call out establishes the fault to be in the customer's network, the customer shall bear GT&T visit charges at a rate of US\$100.00 per hour or any part thereof.

D. REMOVAL CHARGE

The charge for removal within customer's exchange shall be US\$100.00

The charge for removal outside customer's exchange shall be US\$125.00

INTERNET SERVICE AGREEMENT ATTACHMENT

INTERNET SERVICE CUSTOMERS PRICE LIST

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New Bandwidth Prices Based On Americas II Without Satellite Restoration (US\$/Month)

	BANDWIDTH												
	64 Kbps	128 Kbps	192 Kbps	256 Kbps	384 Kbps	448 Kbps	512 Kbps	640 Kbps	768 Kbps	896 Kbps	1,024 Kbps	1,544 Kbps	2,048 Kbps
Installation	1750	2010	2200	3000	3400	3600	3950	4010	4100	4500	4600	4600	5000
1-Year	2,700	4,181	7,453	7,606	8,546	9,283	9,282	10,748	11,374	12,449	14,645	19,712	25,600
2-Year	2,430	4,090	7,290	7,438	8,352	9,073	9,561	10,505	11,110	12,167	14,310	19,037	24,704
3-Year	2,187	3,998	7,044	7,187	8,061	8,757	9,227	10,139	10,718	11,743	13,804	18,349	23,815

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Exhibit 26

2000

No. 743-W

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

(CIVIL JURISDICTION)

BETWEEN:

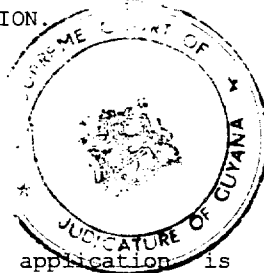
CARIBBEAN WIRELESS TELECOM LLC.

And

1. GUYANA TELEPHONE & TELEGRAPH
COMPANY LIMITED.

2. THE PUBLIC UTILITIES
COMMISSION.

SKELETON ARGUMENTS.



The principles on which this application is to be determined are found in the well-known House of Lord's decision of *American Cyanamid v. Ethicon* [1975] A.C. 396.

[Headnote]

Injunction - Interlocutory - Jurisdiction to grant - Principles on which interlocutory injunction to be granted - No need to be satisfied that permanent injunction probable at trial - Protection of parties - Balance of convenience - Criteria - Rule identical in patent cases

The plaintiffs, an American company, owned a patent covering certain sterile absorbable surgical sutures. The defendants, also an American company, manufactured in the United States and were about to launch on the British market a suture which the plaintiffs claimed infringed their patent. The defendants contested its validity on divers grounds and also contended that it did not cover their product. In an action for an injunction the plaintiffs applied for an interlocutory injunction which was granted by the judge at first instance with the usual undertaking in damages by the plaintiffs. The Court of Appeal reversed his decision on the ground that no prima facie case of infringement had been made out. On the plaintiffs' appeal:

Held, allowing the appeal, (1) that in all cases, including patent cases, the court must determine the matter on a balance of convenience, there being no rule that it could not do so unless first satisfied that, if the case went to trial on no other evidence than that available at the hearing of the application, the plaintiff would be entitled to a permanent injunction in the terms of the interlocutory injunction sought; where there was a doubt as to the parties' respective remedies in damages being adequate to compensate them for loss occasioned by any restraint imposed on them, it would be prudent to preserve the status quo (post, pp. 406C-F, 407G, 408F).

(2) That in the present case there was no ground for interfering with the judge's assessment of the balance of convenience or his exercise of discretion and the injunction should be granted accordingly (post, p. 410C-E).

Hubbard v. Vosper [1972] 2 Q.B. 84, C.A. considered.

Decision of the Court of Appeal [1974] F.S.R. 312 reversed.

Per Lord Diplock, pp. 407-409.

"Your Lordships should in my view take this opportunity of declaring that there is no such rule. The use of such expressions as "a probability," "a prima facie case," or "a strong prima facie case" in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. **The court no doubt must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried.**

It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. One of the reasons for the introduction of the practice of requiring an undertaking as to damages upon the grant of an interlocutory injunction was that "it aided the court in doing that which was its great object, viz. abstaining from expressing any opinion upon the merits of the case until the hearing": *Wakefield v. Duke of Buccleugh* (1865) 12 L.T. 628, 629. So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, **the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.**

As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. **If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage.** If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. **If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.**

It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.

Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo. If the defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark upon a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial.

Save in the simplest cases, the decision to grant or to refuse an interlocutory injunction will cause to whichever party is unsuccessful on the application some disadvantages which his ultimate success at the trial may show he ought to have been spared and the disadvantages may be such that the recovery of damages to which he would then be entitled either in the action or under the plaintiff's undertaking would not be sufficient to compensate him fully for all of them. The extent to which the disadvantages to each party would be incapable of being compensated in damages in

the event of his succeeding at the trial is always a significant factor in assessing where the balance of convenience lies, and if the extent of the uncompensatable disadvantage to each party would not differ widely, it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence adduced on the hearing of the application. This, however, should be done only where it is apparent upon the facts disclosed by evidence as to which there is no credible dispute that the strength of one party's case is disproportionate to that of the other party. The court is not justified in embarking upon anything resembling a trial of the action upon conflicting affidavits in order to evaluate the strength of either party's case.

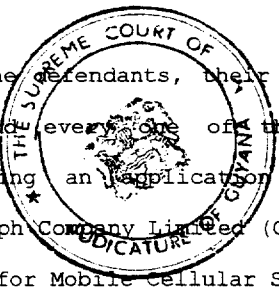
I would reiterate that, in addition to those to which I have referred, there may be many other special factors to be taken into consideration in the particular circumstances of individual cases. The instant appeal affords one example of this."

1. SERIOUS ISSUE TO BE TRIED.

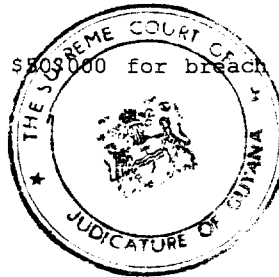
The plaintiffs claim, inter alia:

INDORSEMENT OF CLAIM:

The plaintiff claims against the defendant's jointly and severally as follows:

- 
- (i) An injunction restraining the defendants, their servants and/or agents and each and every one of them from presenting and/or considering an application by the Guyana Telephone and Telegraph Company Limited (GT&T) for a temporary change of rates for Mobile Cellular Service;
- (ii) An injunction restraining the defendants, their servants and/or agents and each and every one of them from presenting and/or considering an application by the Guyana Telephone and Telegraph Company Limited for the introduction of "Calling Party Pays" (CPP) in respect of Mobile Cellular Service.
- (iii) An injunction or order restraining the defendants and each and every one of them from breach of statutory duty and in particular the provisions of sections 33 and 43 of the Public Utilities Commission Act, 1999.

- (iv) A declaration that cross subsidisation is prohibited by the terms of the licence granted to the first named defendants under section 7 of the Telecommunications Act, 1990.
- (v) A declaration that a proper interpretation of the Public Utilities Commission Act, 1999, does not permit an application for a temporary increase of rates simpliciter.
- (vi) A declaration that a proper interpretation of condition 18 of the first defendants' licence granted under the Telecommunications Act, 1990, creates an interest in favour of anyone adversely affected by cross subsidization and in particular in favor of the plaintiff.
- (vii) An injunction or order restraining the defendants from cross subsidizing cellular service with or through the existing landline and other services until such time as the Director of Telecommunications can carry out its obligations under condition 18 of the first named defendants' licence.
- (viii) Damages in excess of \$200,000 for breach of statutory duty.



Claims (i), (ii), (iii) & (iv)

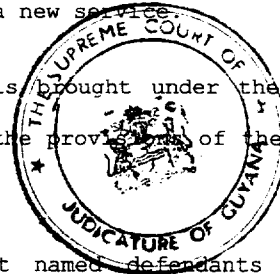
It is the plaintiff's contention that this claim raises several serious issues to be tried. It is in essence a claim for an injunction to prevent the Public Utilities Commission from entertaining an application by the first defendants for a temporary change of rates in respect of cellular service, and the introduction of temporary rates in respect of a new service, the Calling Party Pays service (CPP).

The plaintiff's contention is and remains that the second defendants have no authority under the Public Utilities Commission Act, 1999 to entertain an application for a temporary change of rates. Secondly, it is also the plaintiffs contention that the first defendants have no authority under the Public Utilities Commission Act, 1999, to apply for temporary rates.

The first named defendants in response say that the rates that it is presently enjoying are temporary rates only. They go on to submit on the advice of eminent Senior Counsel in paragraph 9(1)(a) that, *"the application dated 31st August, 2000, filed by GT&T with the PUC was an application to modify the temporary rates for cellular services fixed by the PUC on the 20th June, 1995, effective from the 15th June, 1995, as temporary rates and until final decision by the PUC on GT&T's application for rates, or until modified or terminated by the PUC;"*

The plaintiff's response is, firstly, that the first defendants seek for the first time to introduce the CPP service. There are no rates, temporary or otherwise, existing in respect of this service. The application in this regard is, therefore, an application for rates in respect of a new service.

Secondly, since the application is brought under the 1999 Act it falls to be governed solely by the provisions of the said Public Utilities Commission Act, 1999.



The sole reference by the first named defendants to a section in the Act under which the purported application is made is found on page 2 of the application filed by and on behalf of the first named defendant and dated August 31st, 2000. In the 6th paragraph thereof the first named defendants state, *"In keeping with the requirements of section 41 (2) of the PUC Act 1999, I have outlined the relevant information below:..."*

Section 41 (2) commences with the following words, that is to say: *"A notice under subsection (1) shall state - ..."*

Subsection (1) of section 41(referred to immediately above), however, provides as follows:

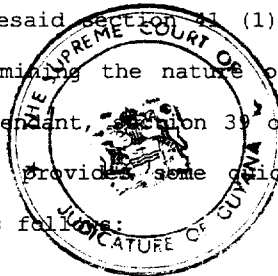
"Subject to section 33, where a utility initiates a new service for which rates will be charged or is desirous of changing any rate or rates being charged by it for any service provided by it, the public utility shall give thirty day's notice to the Commission and file with that notice a tariff stating the rate for the new service or the new rate or rates."

The first defendants have, therefore, inextricably bound their application to section 41 of the Public Utilities Commission Act, 1999.

The rates to be changed, referred to by the aforesaid section 41 (1), must be taken to mean the rates in existence. It is immaterial whether the rates are considered as temporary rates under the "Old Act" (the Public Utilities Commission Act, 1990, as amended) or permanent rates. There is no provision under the 1999 Act for dealing with temporary rates, obtained under the previous Public Utilities Commission Acts, in a manner different from the rates referred to by the aforesaid section 41 (1). If, however, assistance is needed in determining the nature of the rate presently enjoyed by the first defendant, section 39 of the Public Utilities Commission Act, 1999, provides some guidance. That section provides in its entirety as follows:

The rate being charged by a public utility on the first day of January, 1996 for any service rendered by it shall not be increased, after that date except in accordance with the provisions of this Act or any other written law:

Provided that nothing in this section shall affect an accrued right of any person regarding an increase in rates which came into existence after the first day of January, 1996, by virtue of finding of court of law or otherwise.



The Court must, therefore, look to the provisions of the Public Utilities Act, 1999, for the procedure therein stipulated for the change of rates, or rates in respect of a new service.

The relevant provisions are as follows:

Section 41(1), " (see above) "

Section 41 (2),

"A notice under subsection (1) shall state -

(a) where it relates to changing any rate or rates -

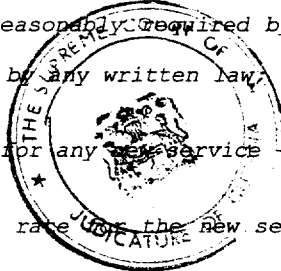
- (i) the existing and duly established rate or rates;
- (ii) the changes proposed to be made in the rate or rates;
- (iii) the date from which the changed rate or rates are to take effect;
- (iv) the reasons for the change in rate or rates; and
- (v) any other particulars reasonably required by the Commission or specified by any written law.

(b) where it relates to the rate for any new service -

- (i) the date from which the rate for the new service is to take effect; and
- (ii) any other particulars reasonably required by the Commission or specified by any written law.

Section 41 (3):

Subject to section 33, where the public utility has filed with the Commission any tariff stating any new rate or rates in respect of any service provided by it, the Commission may, either upon complaint or upon its own motion, enter upon a hearing to determine whether such rate



or rates are just and reasonable and where the Commission does not enter upon such hearing within thirty days of the filing of the tariff stating the new rate or rates, such new rate or rates shall be deemed to be the authorised rate or rates for the service.

The Public Utilities Commission Act, 1999, however specifically provides for an application for temporary rates. It is clear from the relevant section, i.e. section 43, that the application for temporary rates is only authorised within the context of a rate application commenced under section 41.

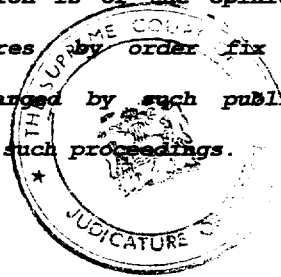
Section 43, provides as follows:

(1) *On a prima facie consideration of the criteria set forth in section 32 (2) or, as the case may be, subject to the terms of any written law, licence or agreement between the Government and a public utility or between the government and an investor referred to in section 33, the Commission may, in any proceedings initiated under section 41 (3) involving the rate or rates charged or to be charged by a public utility, initiated either upon its own motion or upon a complaint, if the Commission is of the opinion that the public interest so requires by order fix a temporary rate or rates to be charged by such public utility pending the final decision in such proceedings.*

(2)

It is clear from the scheme of the act, and the sequence of the sections that temporary rates are only to be fixed where the Commission is considering the fixing of permanent rates. A temporary rates is not an end in itself.

But alas, the Court is not required to make a firm finding on whether the plaintiff's interpretation of the Act is correct or not, it need only determine at this stage that there is a serious issue to be tried.

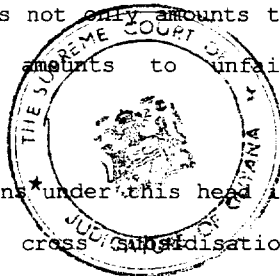


If the plaintiff's submissions in this regard are correct, the second named defendant has no statutory authority to entertain the application for rate change brought by the first named defendant. The consideration of the application is, therefore, a nullity and consequently all proceedings taken thereupon and orders made thereon similarly, would be nullities.

Claims (ii), (iv), (vi) & (vii)

The Calling Party Pays system, as perceived by the first defendant, involves, in cases where a call is made from a landline Telephone to a cellular telephone, the landline caller paying a much higher rate for access to the cellular network than he would had the call been placed to another landline Telephone. In this way the revenues earned from the call made from the landline Telephone and credited to the landline Telephone, on the face of it, subsidises the cost of the use and provision of the cellular service. This subsidy is and would not be available to another, or any other cellular provider. In this way the first defendant would unfairly maintain an artificially low cost for the provision of its cellular service. This not only amounts to unfair cross subsidisation. It also amounts to unfair competition.

The claim for the orders and injunctions under this head is based on the prohibition against unfair cross subsidisation contained in the licence granted to the first defendants. The provisions of the licence granted to the first defendant that deal with the issue of cross subsidisation are, thankfully, set out in exhibit B. to the first named defendant's affidavit in answer. The first named defendants have hastened to point out in paragraph 9, 3 (a) that, "the provisions of GT&T's licence do not prohibit cross subsidisation. They prohibit unfair cross subsidisation.... the questions of whether cross subsidisation exists here and whether it is unfair, therefore, fall to be



considered by the commission, not the court, except where the court is acting on appeal from the Commission or as a court of judicial review. However, in this case the commission has not even yet had an opportunity to consider the evidence on this issue;"

In so far as this submission states that cross subsidisation is a matter for the commission to consider it is an obtuse misrepresentation of the provisions of clause 18 of the licence granted to the first named defendant. For it is the Director of Telecommunications that is charged with the responsibility of determining unfair cross subsidisation under the aforesaid clause 18 of the aforesaid licence. The Public Utilities Commission has no authority invested in it by the terms of the aforesaid licence to consider whether cross subsidisation is unfair.

No appointment has been made by the relevant authorities in respect of the office of Director of Telecommunications. It is in this context, therefore, that the plaintiffs complain that they have been deprived of the opportunity to ventilate their complaint against what they perceive as unfair cross subsidisation, necessarily contained in the Calling Party Pays system. The plaintiffs' right to complain in this regard, is protected and guaranteed under article 40, of the Constitution of the Co-operative Republic of Guyana, which provides inter alia that the "right to protection of the law" is a fundamental right. There being no appointment to this position, the plaintiff is not afforded the protection of the relevant clauses of the licence referred to.

Further, the second defendant now threatens to encroach on this area of competence and responsibility which was hitherto reserved to the Director of Telecommunications. That the first named defendant fallaciously assumes that it is within the Commission's mandate to consider the issue of cross subsidisation

is clear from the statements of its understanding of the law previously referred to in paragraph 9 (3) (a) of their affidavit in answer.

The failure to a point a Director of Telecommunications by the relevant authorities is in the circumstances a breach of the plaintiff's right to protection of the law guaranteed to it under article 40 of the Constitution of the Co-operative Republic of Guyana. If, therefore, the second named defendant were to embark on a consideration of an application for the implementation of the Calling Party Pays system the said second named defendant, arguably, would be acting in breach of the plaintiff's right to protection of the law. Constitutional issues are the most serious legal issues that fall to be considered by a Court of Law. As presently advised, the plaintiffs know of no authority that has been determined either against or in favour of the rights claimed herein.

2. Balance of convenience

2.1 Damages is not an adequate remedy.

The reliefs claimed for and on behalf of the plaintiff herein are multifaceted. The endorsement of the claimed prayers for declarations and injunctions. Declarations, for the purpose of inviting the court to declare the respective rights of the parties in public law, (the PUC being a public body exercising quasi judicial functions, and subject to the state action doctrine) in areas of the law which have not previously been considered by the courts. Injunctions, in the first instance, to prohibit the defendants or any one of them from embarking upon the presentation or consideration of the applications presented by the first defendant until after the court has determined the rights of the parties in respect of the matters in issue and thereafter, if the court accepts the rights

in the manner advocated by the plaintiffs, a permanent injunction to prohibit the defendants or any one of them from doing or committing any of the acts complained of unless and until the transgressions complained of are remedied. In claims for interim relief against public authorities, much assistance is to be found in *REGINA v. SECRETARY OF STATE FOR TRANSPORT, Ex parte FACTORTAME LTD. AND OTHERS* (No. 2) [1990] 3 W.I.R. 818.

[Headnote]

European Economic Community - Fishing rights - Common fisheries policy - British-registered fishing vessels managed and controlled from Spain - Act and Regulations of 1988 restricting registration as British - Owners' application for judicial review - Contention that Act and Regulations contravening Community law and depriving owners of enforceable Community rights - Interim injunction against Secretary of State restraining enforcement of Act and Regulations - Whether to be granted - European Communities Act 1972 (c. 68), s. 2(1)(4) - Merchant Shipping Act 1988 (c. 12), s. 14 - E.E.C. Treaty (Cmd. 5179-II), arts. 7, 52, 58, 221

Judicial Review - Crown - Interim injunctive relief - Application for interim injunction restraining Secretary of State from enforcing provisions of statute and Regulations made thereunder - Applicants' contention that Act and Regulations in conflict with laws of European Community and depriving applicants of enforceable Community rights - Principles on which interlocutory relief to be granted

The applicants, companies incorporated under United Kingdom law and their directors and shareholders, most of whom were Spanish nationals, owned between them 95 deep sea fishing vessels registered as British under the Merchant Shipping Act 1894. The statutory regime governing the registration of British fishing vessels was radically altered by Part II of the Merchant Shipping Act 1988 and the Merchant Shipping (Registration of Fishing Vessels) Regulations 1988, both of which came into force on 1 December 1988. Vessels previously registered as British under the Act of 1894 required to be re-registered under the Act of 1988, subject to a transitional period permitting their previous registration to continue in force until 31 March 1989. The 95 vessels in question failed to satisfy one or more of the conditions for registration under section 14(1) of the Act of 1988 and thus failed to qualify for registration as British fishing vessels by reason of being managed and controlled from Spain or by Spanish nationals or by reason of the proportion of the beneficial ownership of the shares in the applicant companies in Spanish hands. The applicants by application for judicial review sought to challenge the legality of the relevant provisions of the Act and Regulations of 1988 on the ground that they contravened the provisions of the E.E.C. Treaty and other rules of law given effect thereunder by the European Communities Act 1972 by depriving the applicants of enforceable Community rights. The Divisional Court of the Queen's Bench Division decided to request a preliminary ruling from the European Court of Justice in accordance with article 177 of the Treaty on the substantive questions of Community law arising to enable them finally to determine the application. On a motion by the applicants for interim relief, they ordered that, pending final judgment or further order, the operation of Part II of the Act of 1988 and the Regulations of 1988 be disapplied and that the Secretary of State be restrained from enforcing the same in respect of the applicants and their vessels so as to enable the existing registrations of the vessels to continue in being. The Court of Appeal, on appeal by the Secretary of State, set aside the order made by the Divisional Court for interim relief.

On appeal by the applicants, the House of Lords held that, as a matter of English law, the courts had no jurisdiction to grant interim relief in terms that would involve either overturning an English statute in advance of any decision by the European Court

of Justice that the statute infringed Community law or granting an injunction against the Crown.

On a reference from the House to the European Court of Justice on the question whether Community law either obliged its national court to grant interim protection of the rights claimed or gave the court power to grant such interim protection:-

Held, that in a case concerning Community law in which an application was made for interim relief, if a national court considered that the only obstacle which precluded it from granting such relief was a rule of national law it must set that rule aside (post, p. 856B).

Amministrazione delle Finanze dello Stato v. Simmenthal S.p.A. (Case 106/77) [1978] E.C.R. 629, E.C.J.; *Amministrazione delle Finanze dello Stato v. Ariete S.p.A.* (Case 811/79) [1980] E.C.R. 2545, E.C.J. and *Amministrazione delle Finanze dello Stato v. MIRECO S.a.S.* (Case 826/79) [1980] E.C.R. 2559, E.C.J. applied.

On the reference back to the House of Lords:-

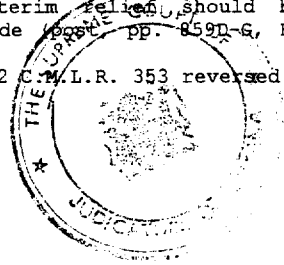
Held, (1) that in considering whether interim relief should be granted the court had to consider first, the availability to either plaintiff or defendant of an adequate remedy in damages and secondly, if no such adequate remedy existed, the balance of convenience, taking all the circumstances of the case into consideration; that where a public authority seeking to enforce the law was involved, an adequate remedy in damages would not normally be available to either party, and in considering the balance of convenience the court had to take into account the interests of the public in general to whom the authority owed duties; that there was no rule that the party challenging the validity of the law sought to be enforced had to show a strong prima facie case that it was invalid, and the matter was one for the discretion of the court; but that the court should nevertheless not restrain the public authority from enforcing the law unless it was satisfied that the challenge to its validity was sufficiently firmly based to justify that exceptional course being taken (post, pp. 857D, 859H, 869E-H, 870C-F, 871E-H, 873F-G, 876A).

American Cyanamid Co. v. Ethicon Ltd. [1975] A.C. 396, H.L.(E.) and *Smith v. Inner London Education Authority* [1978] 1 All E.R. 411, C.A. applied.

F. Hoffmann-La Roche & Co. A.G. v. Secretary of State for Trade and Industry [1975] A.C. 295, H.L.(E.) considered.

(2) That the applicants' challenge to the validity of the provisions of section 14 of the Merchant Shipping Act 1988 relating to residence and domicile was, prima facie, a strong one, having regard in particular to existing decisions of the European Court of Justice; that the substantial detriment to the public interest that would have occurred if they eventually failed in their challenge was not sufficient to outweigh the obvious and immediate damage that would continue to be caused to them if interim relief were not granted and they were ultimately successful; and that, accordingly, interim relief should be granted in terms of the order already made (post, pp. 859D-G, H, 872F, 873D-E, F-G, 879E-F, 88A-B).

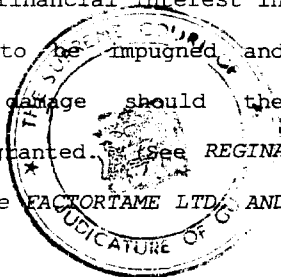
Decision of the Court of Appeal [1989] 2 C.M.L.R. 353 reversed.



2.2 "Whether, ... the defendant . . . would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction."

Once the Honourable Court grants or is prepared to grant the interlocutory injunction prayed for, the plaintiffs through their Attorney at law, Mr Stephen G. N. Fraser, undertake the responsibility in respect of any damages for the loss the defendants would have suffered by being prevented from doing the acts complained of between the time of the application and the time of the trial. The plaintiffs are in a position to pay such damages if any.

However, there are two. Dealing with the second defendant first, the second defendant is the Public Utilities Commission which is charged with carrying out a public function, and presumably, has no vested business or other financial interest in proceeding with the applications sought to be impugned and accordingly will suffer no loss or damage should the interlocutory injunctions sought herein be granted. See REGINA v. SECRETARY OF STATE FOR TRANSPORT, Ex parte FACTORTAME LTD. AND OTHERS (No. 2) [1990] 3 W.I.R. 818)



In respect of the first defendant, they have led no, nor have they attempted to lead any evidence to show that they are likely to suffer any financial losses from the grant of the interlocutory injunctions sought herein. Indeed, the first named defendants have no idea whether they will suffer losses or not. In paragraph 7, of their affidavit in answer, they say, "The first defendant's August 31, 2000 application to the PUC outlines

the various plans, rates and fees that are proposed as well as the estimated subscriber base resulting from the proposals to reduce rates and the offer of CPP. GT&T's estimates of increased subscribers and usage resulting from reduced rates and CPP may be too high or too low by significant amounts. Only time can tell the true results." In the application of the 31st August, 2000, the first named defendant states as follows: "Moreover, we are seeking the new rates for a trial period of six months. This will allow for both the Company and the Commission's staff to test the applicability and the effect of the new rates and the CPP option and recommend adjustments thereto at the end of the period."

The position from these two statements is very clear. The first defendants do not know whether they will suffer any losses whatsoever consequent upon the grant of the injunctions prayed for. Indeed, in all likelihood, they may suffer losses if the application presently before the Public Utilities Commission is granted and they are allowed to introduce the temporary rates they seek. This proposition they unreservedly admit (see previous paragraph).

In any event the temporary rates they seek are pursuant to an experiment in which they intend to use the Public Utilities Commission as a test tube to spawn their diabolical plot to eradicate competition from the Cellular market. The first defendant is prepared to take the loss in order to prevent the competition from coming into the market.

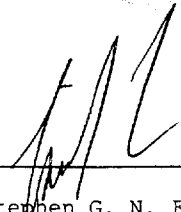
2.3 "Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo. If the defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark

upon a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial."

Once this Honourable Court is satisfied that the factors previously discussed are evenly balanced, it would be quite appropriate for it to grant the injunction in order to preserve the present status quo. It is respectfully submitted, that prior to the plaintiff's application herein, the first defendant enjoyed rates that were favourable to it. This is evidenced by the fact that they kept and maintained them for over five years, whilst constantly expanding the Cellular Service. The grant of the injunction, therefore, will not interrupt the first defendant in its conduct of an established enterprise. At most it will be temporarily enjoined from doing something that it has not done before.

In all of the above premises it is respectfully submitted that the orders and injunctions sought at paragraph 33 (1), (a) and (b) of the Ex parte application by way of affidavit for interim injunctions, sworn to and filed herein on the 22nd day of September, 2000, be granted to and in favour of the plaintiffs, the Caribbean Wireless Telecom LLC.

Dated the 14th day of December, 2000.



Stephen G. N. Fraser,
Attorney-at-law for the
plaintiff

2000

No. 743-W

DEMERARA

**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
CIVIL JURISDICTION**

BETWEEN:

CARIBBEAN WIRELESS TELECOM, LLC

Plaintiff

- and -

**1. GUYANA TELEPHONE AND TELEGRAPH
COMPANY LIMITED**

2. THE PUBLIC UTILITIES COMMISSION

Defendants

SKELETON ARGUMENTS OF FIRST DEFENDANT:

The PUC proceedings the subject of this case are also the subject of a prerogative motion filed by Caribbean Telecommunications Limited. That matter has been heard by Mr. Justice Jai Narayan Singh and awaits decision by him which is fixed for the 15th of January 2001.

We submit that there is absolutely no merit in the plaintiffs application which is frivolous and vexatious and an abuse of the process of the Court. The Court ought to ensure that the PUC carries out its function for which it was set up and should only intervene where there is a clear case that it is exceeding its jurisdiction or acting in contravention of the principles of natural justice. The plaintiffs contentions here (apart from the principles which apply to interim injunctions) amount to the submission that an interim injunction should be granted restraining the PUC's continued hearing of GT&T's application to reduce cellular rates and introduce the Calling Party Pays (CPP) system on the basis that:

1) An application for a temporary change of rates cannot be made by the utility or entertained by the Commission.

This contention is easily met by the fact that the application of the utility dated 31st August, 2000 is merely for a change in temporary rates already fixed by the Commission (please see paragraphs 5, 6 and 9 (1)(a) of the affidavit in answer).

The plaintiffs counsel in his skeleton arguments at page 5 responds that the utility is

applying to introduce CPP for the first time and there are no rates existing in respect of this "service".

But CPP merely indicates which consumer pays the rate, not what the rate is, and the 'service' in question (as defined by section 3(1)(i) of the Act) is the existing mobile cellular service which is already 'used' by both sides to a call. It is not therefore an application in respect of a new service. Currently the cellular user pays the approved rate for both incoming and outgoing calls. Under the CPP system the caller to or from a cellular phone pays that rate.

The 'service' here is the mobile cellular service, the rate is the amount paid for each call. CPP relates to who pays, not what it is paid for or how much is paid. In so far as CPP alters the structure of the rate (who pays) it may amount to a change in rate but it cannot be a change relating to a new service - the service (as defined by section 3(1)(i)) already exists.

Bearing in mind that the existing rates are temporary rates, we wish to draw the court's attention to the provisions of section 43 (1) and (2) of the PUC Act 1999, which state:

43. "(1) On a prima facie consideration of the criteria set forth in section 32 (2) or, as the case may be, subject to the terms of any written law, licence or agreement between the Government and a public utility or between the Government and an investor referred to in section 33, the Commission may in any proceedings initiated under section 41 (3) involving the rate or rates charged or to be charged by a public utility, either upon its own motion or upon a complaint, if the Commission is of the opinion that the public interest so requires, by order fix a temporary rate or rates to be charged by such public utility pending the final decision in such proceedings.

"(2) Any temporary rate or rates fixed under subsection (1) shall be effective from a date specified in the order until the final decision in the proceedings of the Commission referred to in subsection (1), unless modified or terminated sooner by the Commission." (Our emphasis).

Sub-section 2 specifically provides for modification of temporary rates that has been fixed by the Commission. Surely the utility can approach the Commission for such a modification. Why deny access to a utility in this respect? The purpose of the PUC Act is surely to create a regulatory body to which all the participants in the telecommunications industry (or other utility industries) - consumers, the government, the utility or other utilities - can have access.

As Mr. Statia's affidavit in answer indicates, the original application by GT&T to the PUC to fix rates for its new mobile cellular services was made in 1995 (Tariff Act No. 2 of 1995). Please see paragraph 3 of the affidavit in answer. Temporary rates were fixed by the PUC on the 20th June, 1995. It is these rates that GT&T is now asking the PUC to modify.

The PUC act does not fix a time limit for temporary orders. They last until a final decision, or earlier modification or permission by the PUC. The request here by the utility is to modify the temporary rate already made by it.

If the PUC can modify such a temporary order, and there is no doubt that it can, then surely any interested party can ask it to do so. For what the PUC can do of its own motion it can be asked to do.

To hold otherwise would be in fact to deny access to a public regulatory body to parties affected by its decisions (protection of the law).

2) Cross Subsidisation:

As regards the issue of cross-subsidisation raised by the plaintiffs, it is not an absolute. Condition 18 in Part 3 of GT&T's licence, a copy of which is attached, permits cross-subsidisation in the interest of universal service. In the case of Guyana, given its topography and uneven density of population, some cross-subsidisation made very well be required in order to ensure universal service is extended beyond the fully populated coastal belt. This probably accounts for the wording of Condition 18 referred to above.

This factor was also recognised by the Privy Council in relation to Dominica in the Cable & Wireless case (Cable & Wireless (Dominica) Limited -v- Marpin Telecoms & Broadcasting Co. Ltd.- Privy Council Appeal No. 15 of 2000) a copy of which is attached. Please refer specifically to pages 13-17.

In the absence of a director of telecommunications, surely the proper forum to discuss the issues as regards cross-subsidisation in this matter is the PUC, not the court.

In any event even the limited provision in the licence against unfair cross-subsidisation falls to the Director of Telecommunications to enforce. The court cannot, and should not, be substituted for an administrative statutory official for want of the exercise of the executive authority of the Government to appoint someone to that post. The proper recourse to the Court in such circumstances is to seek mandamus compelling an appointment, not to ask the

court to "act" as Director of Telecommunications.

3) Re section 41 of the PUC Act:

Section 41 (1) does not state that any application under it must be for permanent rates only. It simply states (inter alia) that where a utility wishes to change any rates being charged it shall give notice to the Commission and file a tariff.

Therefore, where the utility wishes to ask the Commission to modify a temporary rate order, as the Commission is empowered to do under 43(20), it files an application under section 41(1) in this respect and the Commission may enter upon a hearing to decide whether to change the temporary rate.

In any event, whether or not an application to the Commission to alter temporary rates should be in the form required by section 41, or should be in the simple form of a letter, is entirely within the province of the PUC to decide and not the Court in the first instance to strike it down. The PUC should not be hidebound by such strict procedural requirements, provided it complies with the principles of natural justice and does not act ultra vires. It has been accepted in England that the procedures of such statutory tribunals ought to be simple and not legalistic (please see extract from page 907 of Wade on Administrative Law, 8th edition attached). It should be remembered that most of the members of such a Commission are not legally trained, nor are the parties before it necessarily represented by counsel, although they can be and frequently are.

4) The plaintiff refers to the Cyanamid principles and to the Factortame case. But neither case applies here.

Complex issues of fact are not involved here. Nor are serious violations of the law or contravention of international treaty. In our submission what is involved here is an attempt by the plaintiff to stultify the work of the PUC by raising procedural objections and unsubstantiated allegations, in the interest of the plaintiffs business agenda. To allege, as the plaintiffs' counsel does at page 15 of his skeleton arguments (3rd paragraph) that the utility is seeking the temporary rates in question "pursuant to an experiment in which they intend to use the Public Utilities Commission as a test tube to spawn their diabolical plot to eradicate competition from the cellular market" is an allegation of criminal suspicion between the PUC and GT&T and a downright insult to the chairman and members of the PUC who should not

allow the allegations to pass without challenge. The plaintiffs allegations are based on conjecture and surmise and neither the plaintiff nor anyone else has presented either to the PUC or this Court any evidence that the rates in question are a deliberate attempt to create a loss making situation in the cellular market in order to foreclose competition. The proposed rates are set out in GT&T's application to the PUC which is attached to the plaintiffs' ex parte application by way of affidavit in this matter as exhibit 'B'. If the plaintiff can present evidence that those rates will create a loss making service, the proper forum for presentation of such evidence is the Public Utilities Commission at the of the hearing of the utility's application. This is precisely what the PUC has been established to do. The plaintiff has so far given no indication that it intends to present such evidence, but is instead to asking this court to come to a conclusion on its unsubstantiated allegations. We ask the court to reject this attempt:

- i) that the deponent in his affidavit for ex parte injunction purported to give an undertaking as to damages in favour of the plaintiff without stating that he was authorised to do so;
- ii) the said undertaking is worthless in as much as the plaintiff has not disclosed to the Court its financial ability to honour the said undertaking purportedly given;
- iii) that the affidavit does not disclose a serious issue to be tried;
- iv) that the defendant will suffer significant prejudice and irreparable harm if the injunction were granted;
- v) that damages would be extremely difficult to assess and the defendant would suffer irreparable harm if the injunction were granted;
- vi) that the balance of convenience favours the refusal of the injunction.

5) The PUC is given the power to make its own rules governing its procedures under the provisions of section 87 of the PUC Act 1999. In addition, in section 21 (5) of the same Act the Commission is given the power "to do anything which in the reasonable opinion of the Commission is calculated to facilitate the proper discharge of its functions or is incidental thereto".

We submit that it is natural for a court, more concerned with facilitating the fulfilment

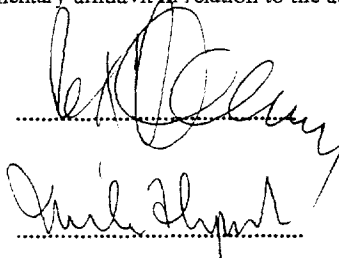
by the Commission of its statutory responsibilities, to regard such provisions as entitling the Commission to entertain an application or a request by any interested party to modify, or to further modify, one of its temporary orders pursuant to the provisions of section 43 (2) of the PUC Act 1991.

To hold otherwise would be to prevent a utility, a consumer, a consumer organisation or the Government from making such representations to the Commission in an effective manner.

We submit that the provisions of the Act should not be interpreted in such a restricted manner. Even prisoners convicted of murder have been held to have the right to make written representations to the Minister exercising a statutory power to review their sentence (please see *R v. SECRETARY OF STATE ex. p. DOODY* (1994) 1 AC 531).

6) The first defendant also wishes to bring to the attention of the court the fact that the person authorised as attorney in fact of the plaintiff company, an external company, to act in Guyana and to sue and be sued in any court in Guyana on behalf of the company, under the provisions of section 16 of the Companies Act 1991 is Mrs. Shakoentela Ganga, and not Mr. Gobind Ganga as is stated in the plaintiffs writ. In addition, the authority to attorney-at-law to act herein for the plaintiffs is a personal authority given by Mr. Earl Singh, the deponent of the ex parte application by way of affidavit for an interim injunction filed herein, who attests merely that he is a director of the plaintiff company and alleges that he is authorised by it to make the affidavit in question. Please see paragraphs 34 and 1 of the said affidavit. An extract from the documents of registration of the plaintiff company as an external company is attached.

If necessary, we request leave to file a supplementary affidavit in relation to the above facts and documents.



Attorneys-at-law for GT&T

Georgetown, Demerara

Dated this 10th day of January, 2001.